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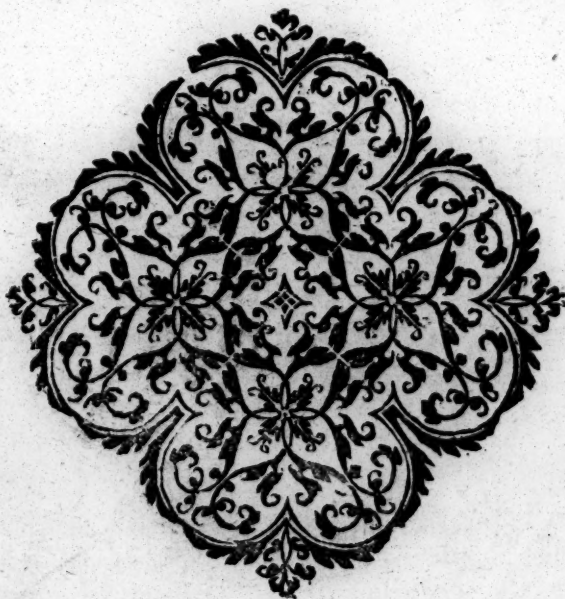
EDVWARD HYDES
Earl of Clarendon
SPEECH

AT

a

A Conference betweene both *Houses*,
on Tuesday the 6th. of *July*, 1641.

At the Transmission of the severall Impeachments
against the Lord Chiefe *Baron Davenport*, Mr.
Baron Trevor, and Mr. *Baron Weston*.



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Mr. HYDES SPEECH

the 6th of *July*

1641.

My Lords,

HERE cannot bee a greater instance of a sicke and languishing *Common-Wealth*, then the businesse of this day; good *God*, how have the guilty these late yeares beene punished, wh^en the Judges themselves have been such Delinquents. 'Tis no marvell that an irregular, extravagant, arbitrary power, like a Torrent, hath broke in upon us, when our ranks, and our Bulworks, the Lawes, were the Custody of such persons. Men who had lost their Innocence could not preserve their courage, nor could we looke that they who had visibly undone us, themselves should have the virtue or credit to rescue us from the oppression

of other men, 'twas once said by one, who alwayes spoke excellently, that the twelve *Judges were like the 12. Lyons under the Throne of Solomon*; under the Throne in obedience, but yet *Lyons*: your Lordships shall this day heare of six, who be they what they will be else) were no *Lyons*: who upon vulgar feares delivered up the precious Forts they were trusted with, almost without assault, and in a tame, easie, trance of flattery and servitude, lost and forfeited (shamefully forfeited) that reputation, awe and reverence, which the *Wisedome, Courage, and Gravity* of their Venerable Predecessors, had contracted and fastned to the places they now hold, and even rendred that study and Profession, which in all Ages hath been, and I hope now shall bee of an Honourable estimation, so contemptible and vile, that had not this blessed day come, all men would have had that quarrell to the Law it selfe which *Marius* had to the Greeke tongue, who thought it a mockery to learne that Language the Masters whereof lived in bondage under others: And I appeale to these unhappie Gentle men themselves, with what a strange negligence skorne and indignation, the faces of all men, even of the meanest have beene directed toward them, since (to call it no worse) that fatall declension of their understandings in those Judgements of which they stand here charged before your Lordships: But (my Lords) the worke of the day is the greatest instance of a growing, and thriving

thriving *Common-wealth* too : and is as the dawning of a faire and lasting day of happinesse to this Kingdome , 'tis in your Lordships power, (and I am sure tis in your Lordships will) to restore the dejected broken people of this Island, to their former joy and securitie, the successors of these men to their old priviledge and veneration, & *sepultas propè leges revocare.*

My Lords , the Iniquity of *Judges* is infectious, and their craftiest combination to leave as few innocent as may be, your Lordships have heard of the justice of two of the greatest Courts of *Westminster*, and that you may know how little advantage the other of his Majesties Revenue, the Court of *Exchequer*, hath of its fellowes in the administration of right. I am commanded by the House of *Commons* to present to your Lordships three severall charges , against three Judges of that Court, my Lord chiefe Baron *Davenport*, Mr. *Baron Trevor* , and Mr. *Baron Weston*, your Lordships will please to heare them read.

Your Lord ships observe , that the great resolution in *Ship-money*, was a Crime of so prodigious a nature, that it could not be easily swallowed, and digested by the Consciences, even of these men, but as they who are to wrastle or run a race , by degrees prepare themselves by dyet, and lesser assayes for the maine exercise, so these *Judges* enter themselves and harden their hearts by more particular trespasses upon the Law : by impositions and taxes upon the Merchant in
A 3,
Trade'

Trade, by burdens and pressures upon the Gentry in Knighthood, before they could arrive at that universall destruction, of the Kingdome by *Ship-money*, which promised reward and security for all their former services, by doing the worke of a *Parliament* to his Majesty in supplies, and seemed to delude justice, in leaving none to judge them, by making the whole Kingdome party to their oppression.

My Lords, of this Crime these three *Judges* seeme to be at least equally guilty, for however one of them *my Lord Chiefe Barron*, is not charged with that Judgement, in the *Exchequer-Chamber* against *Mr. Hampden*, and how hee failed in making his conclusion from his owne premisses, he onely can informe you. Your Lordships see how quickly he repented, that that mischief was done without him there, by his overtaking his Brethren in his circuit, and as he said of the vilest kinde of flatterers, *Crudelissimo servitutis genere, quod intra se abominabantur, palam laudabant*: hee made all possible hast to redeeme himselfe from that imputation of *Justice*, and declared publicuely in the face of the Country, that it was adjudged by all the *Judges* of *England*, that *Shipmoney* was due to the King, though I beleeve he will be now glad to be thought none of those Judges, and what others did he well knew. And thereupon imprison'd a poore man for doing that, which if *Ship-money* had beene due to his Majesty by *Magna Charta*, had beene lawfull for him

him to have done ; of the Resolutions and judgement it selfe I am not to speak, your Lord-ships have passed your noble Judgement.

My Lords, the first charge in order is, that presumptuous Decree against Mr. *Rolles* and others, and in truth whatsoever glosse they put upon it, is no other then a plaine grant of the Subsidy of *Tunnage* and *Powndage* to his Majesty upon all Merchandize; after their goods seised for *non-payment* of that pretended duty, the Proprietors brought *Replevins* (which is the naturall and genuine remedy, appointed by Law in case of Property, and grounded upon property) the Court awards an injunction to stay these *Replevins*, the goods were in the Kings possession, and no *Replevin* would lye against the King: truly (my Lords) the Injustice here is not so scandalous, as the fraud; we all know a *Replevin* (as no other suite) lyes against the King, if the goods be in his owne hands, in his Bedchamber, but to call a seizure by the Farmours (of whose interest this Court will not deny the notice, and if his Majesty had any right, they well knew he had transferred it to these men) or the Ware-houses of the Customs, the Kings possession, to defeate the Subject of his proper remedy, was the boldest piece of *Sophistry* we have met with in a Court of Law: Pardon me if I am transported: The *Civilians* say, *Tutor Domini loco habetur cum rem administrat, non cum pupillum spoliat*: The Office of Judges is to preserve and give remedy for right, here they found

found a right, a knowne and questionable right, yet instead of assisting tooke away the remedy, to preserve that right, what shall we call these *Judges*? my Lords, in this Argument I am not willing to say much; tis enough that your Lord-ships know Tunnage and Poundage is not a duty to the Crowne; but a Subsidie, and so granted in *subsidium*, sometimes *pro una vice tantum*, sometimes for yeares, and then ceased when the time did expire, that when it was first granted for life, it was with this clause: *Ita quod non trahatur in exemplum futuris Regibus*, but tis abundantly enough that his sacred Majesty cannot bee tainted with the advices and judgements of these men, but lookes on this duty singly as the meere affection and bountie of his Subjects, the which no doubt he shall never want.

My Lords, the next charge is concerning *Impositions*, Mr. *Vassalls* goods are seised for not paying Impost, which hee conceived to bee against Law, he is imprisoned, and judgement given against him, without suffering him to bee heard, upon the point of right, because that had beene heretofore iudged in *Bates's Case*: And yet these very Judges have not thought themselves so bound up by former judgements, but that since this time they have argued a case upon the same point, which was adjudged in *Hillary Terme* in the 15. *Eliz.* and confirmed after by all the *Judges* of England in a Writ of Errour, in the 21. yeare of that *Queenes* reigne, tis *Walshinghams Case*,
howev e

however the same modesty seized them againe
 in the case of a Noble Lord, not now present:
 Whether the King without assent of *Parliament*,
 may set impositions upon the Wares, and goods
 of Merchants, is no new question; it hath been
 more then once debated in *Parliament*, and in-
 deed whilst it was a question, was fittest for a
Parliament: I will not trouble your *Lordships*
 long: 'tis now resolved, and nothing new can
 be said in this Argument, though I may have
 leave to say, if the King can by his Letters
 Patents create such a right to himselfe, and by a
 legall course recover that right under such a Ti-
 tle, such Letters Patents are in no degree inferior
 to an Act of *Parliament*: to reconcile such a power
 in the Prince, and the property of the Subject,
 that the one must not be destructive to the other,
 will require a much greater, a subtler under-
 standing then I pretend to; but my *Lords* I doe
 not thinke the judgement in this point to
 be so great a crime in these *Judges*, as that they
 presumed to judge at all; the matter had beene
 long debated in *Parliament* undetermined, and
 therefore not within the Consuance of an in-
 feriour Court; had it not beene true that For-
 restre sayes in his 36. Chapter of the Lawes
 of England, *Neque Rex per se aut Ministros suos,*
in agris, subsidia, aut quævis onera alia imponit
populo sine concessione vel assensu totius Regni sui in
Parliamento suo expresso &c. If the Statute de
Palagio non concedendo, if the 30th. Chapter of

Magna Charta, and all the other Statutes to that purpose, bee not cleere in the point, they might easily have apprehended so much weight, so much difficulty in the question, (especially since in all our Law bookes, not so much as the word imposition is found, untill the case in my Lord Dyer of 1. *Eliz.* (fol. 163.) that they might very well have suspected themselves to bee no competent *Judges* for that determination, and I hope by the experience of this *Parliament* the *Judges*, will recover that ancient modesty, to believe that some cases may fall out that may not be properly within their jurisdiction in the 9. yeare of *Eliz.* (tis in the *Parliament Rolls*) It being found by an office after the death of Gilbert de Clare Earle of *Gloster*, that his sisters were his Heyres, *nisi Comitissa Glocestriae esset pregnant*, the question was, whether the King might grant the Heyres their Livery in *preiudicium impregnaturæ*: This was conceived *negotium novum, & difficile*, and the King having commanded the *Chancellour* and *Judges* to deliver their opinions in writing, they returned, *quod non audebant dictum negotium definire, nec Domino Regi consulere sine assensu magnatum, propter raritatem & difficultatem*: whereupon day was given to the parties, *ad proximum Parliamentum*. And your Lordships well know the speciall care that is taken by the Statute of 14. *Ed. 3. cap. 5.* that such matters as for the difficulty are not fit for the *Judges*, or through eminent delay are not dispatched

patched by the *Judges*, shall be determined in *Parliament*. Not such matters as the parties concerned, had rather venture upon your Lordships judgements, then upon the Rules, and proceedings of the Law (*God knowes* what mischief and confusion may fall out upon that admission) there must be such difficulty, such delay, before that Statute meant your Lordships Iustice should be concerned in the resolution, I wish these Gentlemen had thought this business a matter of that difficulty as had been fit for such a delay.

My Lords, we come next to the charge, concerning Knighthood. Mr. *Maleverer* appears upon the proceffe of that Court, pleads and submits to his fine, *ponit se in gratiam curiae*: The *Barons* refuse to impose any fine, they had no power to doe that, he must treat with certaine Commissioners appointed for that purpose, and compound with them: your Lordships have not met in the same men such contradictions of crimes, who would suspect the same men in one charge, to have the mettle to usurp the power, and exercise the jurisdiction of the highest Court, the Court of *Parliament*, and presently to want the Spirit to doe that which was so restrained, and peculiar to their places to have done, as that none else could doe it? they had no power to fyne as if the sole business of sworn *Judges* in a Court of Law, were to summon and call men thither, and then to send them on er-

rands to other Cōmissioners for Iustice: 'tis true
 the Commissioners of 1. Edw. 1. to Tiptosse and
 Berk, and since to others, were and have been to
 compound with those, who desired to com-
 pound, not otherwise, they had no power to
 compell any, to fine any; that trust by the Law,
 was and is onely in the Judges: so that if this
 duty were aright to his Majesty, and the Per-
 sons lyable refuse to compound, for ought these
 Judges can doe, the King must loose this duty,
 they can impose no fyne, onely they have found
 a trick, which they call the course of the Court;
 to make his Majesty a saver: appeare while you
 will, plead what you will, submit to the mercy
 of the Court, Issues shall goe on still, as if you
 did neither, till you have done somewhat that
 Court will not order you to doe, nor is bound
 to take notice of when you have done: your
 Lordships will help us out of this Circle? And
 that you may see how incapable they are of any
 excuse in this point, the very *Mittimus* out of
 the Chancery gives them expresse command a-
 mongst other things, *ut fines omnium illorum qui*
iuxta proclamationem prædict. ordinem antepredict.
diem suscepisse debuerunt, capiatis &c. 'Tis onely
 worth your Lordships observation, this misfor-
 tune commonly attends (and may it ever) those
 absolute, disused rights, that be the thing in it
 selfe in a degree lawfull, the advisers and Mi-
 nisters of it so faile in the execution, that as it
 usually proves as grievous to the Subiect, so by
 some

some circumstances it proves as penall to the Instruments, as if it were in the very nature of the thing against all the Lawes of government.

I have wearied your Lordships: you see in what a dresse of injustice, subtilty and oppression, I am very unwillingly compelled to present these *Judges* to you: if they appeare to your Lordships under any other character of known and confessed learning in the whole course of their lives, how farre that will aggravate their fault your Lordships must onely judge; if under the excuse of ignorance, or not much knowledge in the duty of their places, your Lordships will easily conclude, what infinite mischief, of which your Lordships have no particular information, the Subjects of this Kingdome have suffered in their lives, in their fortunes, under such ignorance, and such presumption: if under the reputation of prudence and integrity in all cases, except these presented to your Lordships; your Lordships will be at least of the same opinion that he of *Lacedemon* was of the *Athenians* if they carried themselves well, when time was, and now ill; they deserve a double punishment: because they are not good, as they were; and because they are evill, as they were not.

My Lords, if the excellent, envied constitution of this Kingdome, hath beene of late dis-tempered, your Lordships see the causes: if the sweet harmony betweene the Kings protection,

and the Subjects obedience, hath unluckily suffered interruption, if the royall Iustice, and Honour of the best of Kings hath beene mistaken by his people, if the duty and affection of the most faithfull and loyall Nation, hath been suspected by their gracious Sovereigne, if by these misrepresentations, and these misunderstandings, the King and People have beene robbed of the delight and comfort of each other, and the blessed peace of this Island beene shaken and frighted into Tumults, and commotion, into the poverty, though not into the rage of Warre, as a people prepared for destruction and desolation: these are the men actively or passively, by doing or not doing, have brought this upon us: *Misera servitus falsa pax vocatur: ubi iudicia desinunt incipit bellum.*

My Lords, I am commanded by the House of Commons, to desire your Lordships, that these three *Judges* may be speedily required to make their answeres to these Impeachments: and that such further proceedings may bee had against them, as the course and Iustice of *Parliament* will admit.

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